Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of	)	
	)	
Calling Party Pays Service Offering in the Commercial Mobile Radio Services	)	WT Docket No. 97-207
	)	
	)	

REPLY COMMENTS OF OMNIPOINT COMMUNICATIONS, INC.

Omnipoint Communications, Inc. (Omnipoint), by its attorneys, hereby submits its reply comments in response to the comments filed on the Commission's Declaratory Ruling and Notice of Proposed Rulemaking[1] in the above-captioned proceeding. In its initial comments, Omnipoint urged the Commission to fundamentally change its proposed approach to calling party pays (CPP) to one that will promote competition by establishing wireless service as a viable alternative to wireline service. The comments overwhelmingly demonstrate that such a fundamental re-assessment of the issue is necessary.

I. CPP SHOULD BE IMPLEMENTED TO FOSTER COMPETITION WITH ILECS

It is clear that if two-way wireless telephony is to be a true substitute for wireline local exchange service, CPP must become the norm in the United States and its implementation and

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[1] Calling Party Pays Service Offering in the Commercial Mobile Radio Services, Declaratory Ruling and Notice of Proposed Rulemaking, FCC 99-137, WT Docket No. 97-207 (rel. July 7, 1999) (NPRM).

operation must parallel wireline services, as it does in many foreign countries. Thus, as with a call to a wireline customer, the calling party should pay for the call. This is the norm for other services that compete with incumbent local exchange carrier (ILEC) service, such as competitive local exchange carrier (CLEC) service; and it should be the norm for wireless service, as well.

CPP, implemented in this manner, would significantly enhance and further competition between wireless and wireline carriers and among wireless carriers by allowing wireless carriers to eliminate the charges levied on their subscribers for incoming calls. As noted by the Competition Policy Institute (CPI), the fact that wireless customers pay for incoming calls is "at odds with the billing arrangements in the rest of the nation's telecommunications system."[2] One of the reasons posited by CPI for the development of wireless service in this manner is that the service was viewed as a "high-value product" and a "discretionary service bought by business persons and wealthier individuals."[3] Although wireless service clearly is becoming a service of mass appeal, it is hampered in its ability to be a wireline substitute by a structure that requires the called party to pay for incoming calls. It is well documented that in the current environment many wireless customers do not leave their wireless phones turned on and/or limit the release of their wireless phone number, in part, because the called party pays for incoming calls. With CPP, the Commission has the opportunity to put wireless and wireline service on the same competitive footing and level the playing field.

By eliminating the charge for incoming calls, CPP also would make wireless services more attractive to consumers, especially low-income and fixed-income consumers. As shown by

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2 Comments of the Competition Policy Institute at 1.

3 Id. at 2.

the Cellular Telecommunications Industry Association (CTIA) in its comments, CPP will expand the market for wireless phones in the United States to people who otherwise cannot afford wireless service and it will lead to the publication of wireless phone numbers, which will make customers easier to reach.[4] Also, CPP, when combined with prepaid wireless service, will enable customers to manage their bills and it will enable customers with poor credit to obtain wireless service, when they might otherwise be unable to do so.[5]

Moreover, by enabling wireless service to become an effective alternative to wireline service, CPP would lead to downward pressure on the price of both wireline and wireless service. Thus, CPP would benefit all consumers, including consumers who do not subscribe to wireless service.

A. WIRELINE METHOD

Wireless service will only become a true alternative to wireline service, however, if CPP is implemented in a way that is widely accepted by consumers and cost effective for service providers. As detailed in the study performed by The Strategis Group, as presented in the Personal Communications Industry Association (PCIA) comments, many foreign countries have deployed CPP with resounding success following a wireline model. The New York State Department of Public Service (NYDPS) supports a system based on intercarrier compensation arrangements and recommends that the Commission look to the European model, in which the called party's CMRS carrier bills the company that delivered the call, which would then bill its customer, arguing that a CPP system based on intercarrier compensation arrangements will better

[4] Comments of CTIA at 4-6.

[5] Id. at 6-7.

serve consumers. According to the NYDPS, this system would allow all carriers, regardless of technology, to recover the costs of terminating traffic originating on another carrier's network.[6] The Federal Trade Commission (FTC) also concludes that an interconnection approach to CPP may prevent many of the potential problems that it foresees with the Commission's proposal, such as unauthorized billing and pay-per-call type abuses.[7] According to the FTC, an interconnection approach also would enable consumers to compare LEC CPP rates and choose the best one.[8] Under a non-interconnection CPP arrangement, however, there would be no downward pressure on the price of CPP services because the billed party has no contractual relationship with the carrier.

B. THE NPRM MODEL WILL NOT WORK

It is equally clear that wireless service will not be a substitute for wireline service if CPP is implemented as proposed in the Commission's NPRM. Whether supporting the Commission's proposal or opposing it, the comments demonstrate that CPP, as currently proposed, simply will not be economically viable, nor will it establish wireless service as a substitute for wireline service, because of the many problems identified by commenters, the burdensome notification proposed by the Commission, and the economics of billing.

Rather than establishing wireless service as a substitute for wireline service, CPP as proposed in the NPRM will perpetuate the notion that the services are distinct. In fact, by differentiating calls to wireless customers from calls to wireline customers, the proposed CPP mechanism establishes wireline service as the preferred technology for introducing competition

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6 NYDPS Comments at 2.

7 Comment of the FTC at 29 and 37.

8 Id. at 19.

in the local exchange market, while relegating wireless technology to "second-class" status. The Commission should move away from a regulatory mechanism that prefers wireline to wireless technology. Thus, just as an ILEC customer placing a call to a CLEC customer pays for the call, an ILEC or CLEC customer placing a call to a wireless carrier customer should pay for the call.

In addition, CPP as proposed in the NPRM is not viable. As demonstrated by Omnipoint in its comments, the notification mechanism proposed by the Commission is extremely obtrusive to consumers, and costly and burdensome to carriers. In addition, a lengthy announcement as proposed by the Commission would stigmatize CPP and generate frustration and confusion among consumers, thereby harming the ability of CPP to become a competitive, transparent alternative to wireline local exchange service.

The Commission should implement CPP so as to eliminate the need for such a notification. This can be accomplished by implementing CPP in a manner parallel to wireline service, which, at the same time, would minimize the cost of CPP. Notification could more simply be handled with consumer education and information, for example, by including an explanation of CPP in the White Pages directories. Again, looking to the experience in other countries where CPP works, no country has imposed any form of notification other than its equivalent of a distinctive numbering plan area (NPA) for calls to wireless subscribers.

Moreover, there is no need for notification if a wireline model is followed. Contrary to the assertions of some commenters, consumers already receive charges for many calls today without prior notification of the charges. Most notable are intra-LATA, intra-NPA toll calls dialed on a seven-digit basis. In New Jersey, as an example, the incumbent LEC, Bell Atlantic, provides "flat rate" service to its residential customers where local calls do not incur a specific charge. However, calls beyond these local calling areas, but still within the same NPA, are toll calls and, although dialed on a seven-digit basis, just like a local call, incur toll charges. In New Jersey, these charges can be as high as $0.42 for the first minute and $0.12 for each additional minute.[9] There is no notification of additional charges on these calls, nor is there a distinctive dialing pattern that would inform a caller that extra charges will be incurred. For the Commission to consider a notification scheme for CPP that deviates from this already-accepted practice of billing the caller for additional charges without imposing intrusive notification would not be consistent with its intent to promote competition between wireline and wireless services.

If, however, a notification requirement is imposed, then it should only be required for carriers whose rates exceed an established threshold level and it should be applied equally to all services and all industry participants. Thus, any service provider, wireline or wireless, whose rates exceed the threshold would be subject to a notification requirement and, conversely, any carrier whose rates do not exceed the threshold level would not be subject to the notification requirement.

The comments also demonstrate that billing remains a significant obstacle to the successful implementation of CPP as proposed in the NPRM. For example, the Coalition to Ensure Responsible Billing (CERB) argues that CPP will be unworkable unless the Commission requires LECs to provide nondiscriminatory access to their billing services.[10] According to CERB, direct billing of CPP charges by CMRS carriers would often cost more than the charges being billed. CERB also states that a requirement that LECs provide billing information would

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[9] Bell Atlantic Yellow Pages for the Hackensack area (Area Code 201). Page 18 of the Bell Atlantic Customer Guide, Monday through Friday day rates for a call of 65 airline miles or longer.

[10] Comments of the CERB at 2-3 and 6-8.

not obviate the need to require LECs to provide nondiscriminatory billing services because it would be impractical to send individual bills for the small and infrequent charges associated with CPP. Similarly, Sprint and MCI WorldCom argue that for CPP to succeed, the Commission must require that LECs provide billing and collection services. According to Sprint, the cost to CMRS carriers for direct billing and collection would be prohibitive, and credit and calling cards would be too cumbersome.[11] And, MCI WorldCom highlights the difficulty of negotiating billing arrangements with thousands of LECs, which would inhibit the spread of CPP.[12]

In spite of these compelling arguments, the Bell Companies and some state commissions oppose a requirement that LECs perform billing for CPP. For example, Bell Atlantic claims that the Commission does not have authority to require LECs to bill CPP calls.[13] Other commenters, including the National Telephone Cooperative Association (NTCA), the Washington Utilities and Transportation Commission, the Public Utilities Commission of Ohio, and the California Public Utilities Commission and the State of California argue, among other things, that there is a competitive market for billing and collection services. NTCA also notes that small LECs do not have either the financial or personnel resources for additional mandates like providing billing for CPP.[14]

Without commenting on the propriety of these arguments, Omnipoint nevertheless contends that, even if the Commission were to require LECs to perform billing and collection, this still would not be sufficient to achieve the universal availability of CPP. Rather, to

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[11] Comments of Sprint Corporation at 7.

[12] MCI WorldCom, Inc. Comments at 5.

[13] Comments of Bell Atlantic at 6.

[14] Comments of NTCA at 5.

implement CPP as proposed in the NPRM, all carriers would have to be required to bill for the service. In addition, based on Omnipoint's experience, the rate charged for billing would, in many cases, exceed the cost of the CPP call. Accordingly, billing remains a significant and, possibly, an insurmountable, obstacle to the successful implementation of CPP as proposed in the NPRM. A wireline model for implementing CPP, however, would avoid these billing issues.

The comments also raise other issues with CPP as proposed in the NPRM. For example, the Washington State Department of Information Services (WSDIS) argues that the calling party would not be able to control cost under the proposed CPP method.[15] The Federal Trade Commission (FTC) argues that it would lead to pay-per-call type abuses[16] and disputes concerning the fraudulent use of telephone service.[17] The FTC also argues that under a non-interconnection CPP arrangement, there would be no downward pressure on the price of CPP services because the billed party would have no contractual relationship with the carrier. In addition, the FTC notes that the calling party might not be the billed party, and claims that under traditional legal principles, the CMRS carrier would not be authorized to bill for those calls. According to the FTC, however, these issues are minimized or eliminated under an interconnection approach to CPP.[18] MCI argues that under the FCC's approach, wireless resellers would need direct interconnection to wireless networks.[19] This, also, should not be an issue under a wireline model.

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15 WSDIS Comments at 1.

16 FTC Comments at 29.

17 Id. at 37.

18 Id. at 29 and 37.

19 MCI WorldCom Comments at 4.

Thus, it is clear that while CPP as proposed in the NPRM is not viable, the wireline model for CPP would avoid most, if not all, of the issues raised. Accordingly, the Commission should implement CPP based on a wireline model.

II. THE FCC SHOULD PREEMPT STATE REGULATION

Finally, Omnipoint strongly supports the comments of PCIA that the Commission has exclusive authority over CMRS-LEC interconnection. As demonstrated by PCIA, Congress has made it clear that there is no constraint on the Commission's ability to set a federal regulatory framework for the development of CMRS as a landline service competitor.[20] Accordingly, Omnipoint urges the Commission to exercise its full jurisdiction over CMRS in implementing the interconnection provisions of the 1996 Communications Act and exercise regulatory authority over CMRS-LEC interconnection arrangements.

In addition, as demonstrated by PCIA, states should be precluded from instituting notification regulations under section 332 of the Act. As demonstrated by PCIA, CPP notification requirements are "inextricably tied to the entry of CMRS providers into the market and rates charged for CMRS services" and conflicting state notification requirements would constitute barriers to entry.[21] In addition, as demonstrated by PCIA, any state regulation of CPP billing and collection would affect the price of the service and create a *de facto* barrier to entry.[22] Accordingly, Omnipoint urges the Commission to preempt any state regulation in connection with CPP.

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20 PCIA Comments at 56.

21 Id. at 26.

22 Id. at 52.

III. CONCLUSION

Based on the foregoing, Omnipoint urges the Commission to implement CPP in parallel with wireline services and to minimize its cost so that CPP can be an effective alternative to local wireline service.

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CERTIFICATE OF SERVICE

I, Althea B. Pierce, do hereby certify that on this 18th day of October, 1999, a copy of the Reply Comments of Omnipoint Communications Inc. was mailed by first class United States mail, postage prepaid, to the parties listed below:

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